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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

<p>In re: Complaint and Petition of WILLIAMS SPORTS RENTALS, INC., as Owner of a Certain 2004 YAMAHA WAVE RUNNER FX 140 (CF 5408 LE) for Exoneration from or Limitation of Liability</p>	<p>No. 2:17-cv-00653-JAM-EFB</p> <p>ORDER GRANTING PETITIONER'S MOTION TO DISMISS</p>
<p>MARIAN LATASHA WILLIS, on behalf of the Estate of RAESHON WILLIAMS,</p> <p style="padding-left: 100px;">Respondent/Counter Claimant,</p> <p style="text-align: center;">v.</p> <p>WILLIAMS SPORTS RENTALS, INC.,</p> <p style="padding-left: 100px;">Petitioner/Counter Defendant.</p>	

Marian Latasha Willis, on behalf of her son's estate, seeks to recover against Williams Sports Rentals for a jet-ski accident that resulted in her son's drowning. Invoking this Court's admiralty jurisdiction, Williams Sports Rentals filed a limitation action that compelled Willis to file her claims against the company in this proceeding. Now Williams Sports Rentals seek dismissal of the counterclaims asserted in Willis's

1 Second Amended Claim. For the reasons set forth below, the
2 motion to dismiss is granted with prejudice.¹

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4 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

5 Petitioner Williams Sports Rentals, Inc. ("WSR") filed its
6 Complaint for Exoneration or Limitation of Liability on March
7 28, 2017. ECF No. 1. The Court approved the stipulation of
8 value of the subject vessel (a 2004 Yamaha Wave Runner), ordered
9 a Monition to issue against all persons with claims for losses
10 and injuries as alleged in the Complaint and stayed prosecution
11 of related proceedings. ECF Nos. 11, 12. Claimant Marian
12 Latasha Willis ("Willis"), acting as Personal Representative of
13 the Estate of Raeshon Williams ("Decedent") filed an answer and
14 counterclaim on June 2, 2017. ECF Nos. 16, 17. Willis then
15 filed a First Amended Claim ("FAC") adding an additional
16 counterclaim. ECF Nos. 21 & 22.

17 At a hearing held on August 29, 2017, the Court dismissed
18 the FAC for failing to allege sufficient facts to support
19 Willis's claims and permitted Willis leave to amend. ECF No.
20 41. The Court also denied Willis's motion to lift the stay on
21 related proceedings, which remains in place. Id. Willis
22 appealed that ruling and requested a stay in the present
23 proceedings pending her appeal. ECF Nos. 43 & 50. The Court
24 declined her request. ECF No. 56.

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for December 5, 2017.

1 Willis filed a Second Amended Claim ("SAC"). ECF No. 46.
2 She alleges the following facts: Decedent drowned in Lake Tahoe
3 on August 13, 2016. SAC at ¶ 3. Decedent had gone to the lake
4 on a work trip with some of his Zip, Inc., co-workers, including
5 Thomas Smith and C.E.O. Kai Petrich. Id. at ¶ 6. Smith and
6 Petrich rented a Wave Runner from WSR in the early afternoon.
7 Id. at ¶ 7. At around 6 p.m., Decedent rode on the back of the
8 Wave Runner as Smith drove the two of them across part of the
9 lake, from Timber Cove to El Dorado Beach. Id. Smith, in
10 violation of several Inland Rules, rode into an on-coming wake
11 at a speed that caused both Smith and Decedent to be thrown into
12 the water. Id. at ¶ 8. Decedent then drowned. Id. Willis
13 alleges that WSR failed to "a. Determine whether Smith and/or
14 Petrich had the competence and qualifications to operate the
15 accident WAVE RUNNER; b. Provide Smith and/or Petrich with
16 adequate training or instruction; c. Properly equip the accident
17 WAVE RUNNER; and/or d. Properly service and maintain the
18 accident WAVE RUNNER." Id. at ¶ 11.

19 WSR now moves to dismiss the SAC for failure to state a
20 claim under Federal Rule of Civil Procedure 12(b)(6) and
21 Admiralty Rule F(8).²

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23
24 ² Willis asked the Court to defer ruling on the Motion to Dismiss
25 until the Ninth Circuit ruled on Willis's Urgent Motion to Stay
26 filed under Fed. R. App. P. 8(a)(2) and Ninth Circuit Rule 27-
27 3(b). Opp'n at 4. The Ninth Circuit denied her motion on
28 November 28th. Order, Williams Sports Rentals Inc. v. Marian
Latasha Willis, No. 17-16981 (9th Cir. Nov. 28, 2017)
("Appellant's motion to stay proceedings in the district court
pending appeal is denied."). This Court's reasons for denying
the stay are set forth in its October 31st Order. ECF No. 56.

1 II. OPINION

2 A. Legal Standard

3 "To survive a motion to dismiss, a complaint must contain
4 sufficient factual matter, accepted as true, to state a claim to
5 relief that is plausible on its face." Ashcroft v. Iqbal, 556
6 U.S. 662, 678 (2009) (citation and quotation marks omitted).
7 This standard requires "more than an unadorned, the-defendant-
8 unlawfully-harmed-me accusation." Id. A pleading is
9 insufficient if it merely offers "labels and conclusions" or
10 "naked assertions devoid of further factual enhancement." Id.
11 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57
12 (2007)) (quotation marks omitted). "Where a complaint pleads
13 facts that are 'merely consistent with' a defendant's liability,
14 it 'stops short of the line between possibility and plausibility
15 of entitlement to relief.'" Id. (quoting Bell Atlantic Corp. v.
16 Twombly, 550 U.S. 544, 557 (2007)).

17 WSR submits several declarations and exhibits in support of
18 its motion. ECF Nos. 57-2-8. On a motion to dismiss for
19 failure to state a claim, however, the Court's review is limited
20 to the pleadings. See Farr v. United States, 990 F.2d 451, 454
21 (9th Cir. 1993). The Court has not considered these additional
22 materials in reaching its decision.

23 B. Analysis

24 The SAC asserts two causes of action: Wrongful Death and
25 Survival Damages. SAC at ¶¶ 9-21. Both causes of action are
26 based on a negligent entrustment theory of liability. SAC
27 ¶¶ 10-12, 14-15; Opp'n at 8.

28 The Court granted WSR's previous motion to dismiss the FAC

1 on the grounds that Willis failed to plead facts supporting the
2 existence of a duty owed by WSR to Decedent. The Court
3 explained:

4 Both of your claims [] are based in negligence. And
5 here is the issue I have . . . with the way you've
6 attempted to plead duty. It's really not there. . . .
7 [M]y reaction to the motion to dismiss is to grant it
8 with leave to amend to allow you an opportunity to see
9 if you can actually plead duty. . . . I took [your
pleading] as a concession that your client can't claim
there was any - any type of rental agreement or
contractual relationship between [Decedent] and
Williams Sports Rentals. . . .

10 [T]he Decedent, at least from [WSR's] point of view,
11 was unknown, was a total stranger. And so there is
nothing in this counterclaim, at least right now, that
talks about foreseeability.

12 Transcript, ECF No. 44, at 34-37. The Court permitted Willis
13 leave to amend in order to plead facts supporting her claims and
14 to find case law supporting her theory of liability. Id. at 37,
15 41.

16 In response, Willis made two changes to her pleading. In
17 paragraph 8 she amended her allegation "Smith departed Timber
18 Cover with DECEDENT sitting behind him" to read "When Smith
19 departed Timber Cove, DECEDENT was lawfully aboard the accident
20 WAVE RUNNER, sitting behind Smith." Compare FAC ¶ 8 with SAC
21 ¶ 8. Second, Willis amended paragraph 11 of her allegation
22 "Petitioner negligently and carelessly failed, among other
23 things, to . . ." to read "Petitioner negligently and carelessly
24 entrusted the accident WAVE RUNNER to DECEDENT's co-workers in
25 that it failed, among other things, to . . . [.]" Compare FAC
26 ¶ 11 with SAC ¶ 11.

27 Neither change is responsive to the Court's concerns. "A
28 pleading that offers labels and conclusions or a formulaic

1 recitation of the elements of a cause of action will not do.”
2 Iqbal, 556 U.S. at 678 (citation and quotation marks omitted).
3 The SAC merely adds legal conclusions and does not contain any
4 additional facts to support Willis’s claims and theories of
5 relief. There are no facts pled supporting the conclusion that
6 Decedent was “lawfully” aboard the vessel and there are no facts
7 pled supporting the conclusion that WSR “negligently and
8 carelessly entrusted” the vessel to Decedent’s co-workers.

9 Willis seeks to rely upon a negligent entrustment theory to
10 establish liability but her allegations fail under her own cited
11 authority. Both parties cite negligent entrustment cases
12 setting forth a standard that requires knowledge on the part of
13 the vessel-owner. See Churchill v. F/V Fjord, 892 F.2d 763, 771
14 (9th Cir. 1988) (“Section 390 provides that one who supplies a
15 chattel for another’s use whom the supplier ‘knows or has reason
16 to know’ is likely to use the chattel in a manner ‘involving
17 unreasonable risk of physical harm to himself and others’ is
18 subject to liability for the physical harm resulting to them.
19 Restatement (Second) of Torts § 390. To prevail on this theory,
20 appellants must show that William McLinn supplied the skiff
21 directly to his son, and must have known or should have known
22 that Russell would be likely to use the skiff in a dangerous
23 manner.”); In re Fun Time Boat Rental & Storage, LLC, 431 F.
24 Supp. 2d 993, 1001 (D. Ariz. 2006) (“While maritime law
25 recognizes the tort of negligent entrustment, such a tort
26 requires that the boat owner knew or should have known that the
27 person to whom the boat was entrusted (in this case, Osborne)
28 was likely to use it in a dangerous manner.”) (citations

1 omitted); Joyce v. Joyce, 975 F.2d 379, 385 (7th Cir. 1992)
2 (“[T]he essential thrust of the tort of negligent entrustment is
3 that a shipowner can be held liable for negligent entrustment
4 only if he knows or has reason to know that the person being
5 entrusted is incapable of operating the vessel safety.”);
6 Pritchett v. Kimberling Cove, Inc., 568 F.2d 570, 575-76 (8th
7 Cir. 1977) (“Four elements of proof are necessary to establish
8 negligent entrustment under Missouri law: (1) entrustment of a
9 chattel (directly or through a third party) to another;
10 (2) likelihood that the person to whom the chattel is entrusted
11 will, due to his youth, inexperience, or otherwise, use the
12 chattel in a manner involving an unreasonable risk of harm to
13 himself and others; (3) knowledge of the entrustor (actual or
14 imputed) of such likelihood; and (4) proximate cause of the harm
15 to the plaintiff by the conduct of the trustee.”). Willis has
16 failed to allege facts tending to show that Decedent’s co-
17 workers were likely to use the vessel in a manner involving
18 unreasonable risk of harm to others and that WSR knew or had
19 reason to know of such likelihood. Willis has also failed—
20 despite the Court’s invitation—to direct the Court to a case
21 with similar facts to support her theory of recovery against a
22 rental company like WSR.

23 Because the SAC adds only conclusory allegations and lacks
24 facts supporting Willis’s negligent entrustment theory, the SAC
25 is dismissed.

26 Willis has had three opportunities to file her
27 counterclaims in this matter. The Court held a hearing on the
28 prior motion to dismiss and discussed, at length, the

1 deficiencies and what Willis would need to plead in order to
2 move forward with her claims. Yet, Willis's pleadings remain
3 insufficient. It therefore appears to the Court that further
4 opportunity to amend would be futile and leave to amend is
5 denied.

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III. ORDER

For the reasons set forth above, the Court GRANTS WSR's
Motion to Dismiss WITH PREJUDICE.

IT IS SO ORDERED.

Dated: December 15, 2017



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE